

ASSEMBLY BILL

No. 981

Introduced by Assembly Member Hueso

February 18, 2011

An act to amend Sections 44559.1, 44559.3, and 44559.4 of the Health and Safety Code, relating to the Capital Access Loan Program.

LEGISLATIVE COUNSEL'S DIGEST

AB 981, as introduced, Hueso. California Pollution Control Financing Authority: Capital Access Loan Program.

(1) Existing law establishes the Capital Access Loan Program for small businesses, administered by the California Pollution Control Financing Authority (authority), which provides loans through participating financial institutions to qualifying small businesses.

This bill would expand the definition of financial institution for purposes of the program to include depository institutions, insured credit unions, and community development financial institutions, as defined pursuant to federal law.

(2) Existing law requires the authority to create a loss reserve account for each financial institution in order to provide protection against loss. The loss reserve account for a financial institution consists of moneys paid as fees by borrowers and the financial institution, moneys transferred to the account from a small business assistance fund, matching federal moneys, and other moneys provided by the authority or other source. The authority is authorized to withdraw from the loss reserve account all interest or other income that has been credited to the loss reserve account, to be used for the sole purpose of offsetting costs associated with carrying out the program, including administrative costs and loss reserve account contributions.

This bill would also authorize the authority to withdraw a portion of the interest or other income that has been credited to the loss reserve account.

(3) Existing law requires the authority, if matching funds are not available, to transfer to the loss reserve account an amount that is not less than the amount of the fees paid by the participating financial institution. If the qualified business is located within a severely affected community, as defined, the authority is required to transfer to the loss reserve account an amount equal to 150% of the amount of the fees paid by the participating financial institution.

This bill would instead require the authority to contribute an amount not less than 150% of the amount of the fees paid by the participating financial institution, if the qualified business is located within a severely affected community.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 44559.1 of the Health and Safety Code
2 is amended to read:
3 44559.1. As used in this article, unless the context requires
4 otherwise, all of the following terms have the following meanings:
5 (a) “Authority” means the California Pollution Control
6 Financing Authority.
7 (b) “California Capital Access Fund” means a fund created
8 within the authority to be used for purposes of the program.
9 (c) “Executive director” means the Executive Director of the
10 California Pollution Control Financing Authority.
11 (d) (1) “Financial institution” means a federal- or state-chartered
12 bank, savings association, credit union, not-for-profit community
13 development financial institution certified under Part 1805
14 (commencing with Section 1805.100) of Chapter XVIII of Title
15 12 of the Code of Federal Regulations, or a consortium of these
16 entities. A consortium of those entities may include a nonfinancial
17 corporation, if the percentage of capitalization by all nonfinancial
18 corporations in the consortium does not exceed 49 percent.
19 (2) (A) “Financial institution” also includes a lending institution
20 that has executed a participation agreement with the Small Business
21 Administration under the guaranteed loan program pursuant to

Part 120 (commencing with Section 120.1) of Chapter I of Title 13 of the Code of Federal Regulations and meets the requirements of Section 120.410 of Chapter I of Title 13 of the Code of Federal Regulations, and a small business investment company licensed pursuant to Part 107 (commencing with Section 107.20) of Chapter I of Title 13 of the Code of Federal Regulations. For loans where all or part of the fees and matching contributions are paid by an entity participating in the program pursuant to subdivision (e) of Section 44559.2, “financial institution” also includes financial lenders, as defined in Section 22009 of the Financial Code, making commercial loans, as defined in Section 22502 of the Financial Code.

~~(3)~~

(B) A financial institution described in *this* paragraph ~~(2)~~ shall be domiciled or have its principal office in the State of California.

(3) “*Financial institution*” also includes an insured depository institution, insured credit union, or community development financial institution, as these terms are defined in Section 4702 of Title 12 of the United States Code.

(e) “Loss reserve account” means an account in the State Treasury or any financial institution that is established and maintained by the authority for the benefit of a financial institution participating in the Capital Access Loan Program established pursuant to this article for the purposes of the following:

(1) Depositing all required fees paid by the participating financial institution and the qualified business.

(2) Depositing contributions made by the state and, if applicable, the federal government or other sources.

(3) Covering losses on enrolled qualified loans sustained by the participating financial institution by disbursing funds accumulated in the loss reserve account.

(f) “Participating financial institution” means a financial institution that has been approved by the authority to enroll qualified loans in the program and has agreed to all terms and conditions set forth in this article and as may be required by any applicable federal law providing matching funding.

(g) “Passive real estate ownership” means ownership of real estate for the purpose of deriving income from speculation, trade, or rental, but does not include any of the following:

1 (1) The ownership of that portion of real estate being used or
2 intended to be used for the operation of the business of the owner
3 of the real estate.

4 (2) The ownership of real estate for the purpose of construction
5 or renovation, until the completion of the construction or renovation
6 phase.

7 (h) “Program” means the Capital Access Loan Program created
8 pursuant to this article.

9 (i) “Qualified business” means a small business concern that
10 meets both of the following criteria, regardless of whether the
11 small business concern has operations that affect the environment:

12 (1) It is a corporation, partnership, cooperative, or other entity,
13 whether that entity is a nonprofit entity or an entity established for
14 profit, that is authorized to conduct business in the state.

15 (2) It has its primary business location within the boundaries of
16 the state.

17 (j) (1) “Qualified loan” means a loan or a portion of a loan
18 made by a participating financial institution to a qualified business
19 for any business activity that has its primary economic effect in
20 California. A qualified loan may be made in the form of a line of
21 credit, in which case the participating financial institution shall
22 specify the amount of the line of credit to be covered under the
23 program, which may be equal to the maximum commitment under
24 the line of credit or an amount that is less than that maximum
25 commitment. A qualified loan made under the program may be
26 made with the interest rates, fees, and other terms and conditions
27 agreed upon by the participating financial institution and the
28 borrower.

29 (2) “Qualified loan” does not include any of the following:

30 (A) A loan for the construction or purchase of residential
31 housing.

32 (B) A loan to finance passive real estate ownership.

33 (C) A loan for the refinancing of an existing loan when and to
34 the extent that the outstanding balance is not increased.

35 (D) A loan, the proceeds of which will be used in any manner
36 that could cause the interest on any bonds previously issued by
37 the authority to become subject to federal income tax.

38 (k) “Severely affected community” means any area classified
39 as an enterprise zone pursuant to the Enterprise Zone Act (Chapter
40 12.8 (commencing with Section 7070) of Division 7 of Title 1 of

1 the Government Code), any area, as designated by the executive
2 director, contiguous to the boundaries of a military base designated
3 for closure pursuant to Section 2687 of Title 10 of the United States
4 Code, as amended, and any other comparable economically
5 distressed geographic area so designated by the executive director
6 from time to time.

7 (l) "Small Business Assistance Fund" means a fund created
8 within the authority pursuant to Section 44548.

9 (m) "Small business concern" has the same meaning as in
10 Section 632 of Title 15 of the United States Code, or as otherwise
11 provided in regulations of the authority.

12 SEC. 2. Section 44559.3 of the Health and Safety Code is
13 amended to read:

14 44559.3. (a) The authority shall establish a loss reserve
15 account for each financial institution with which the authority
16 makes a contract.

17 (b) The loss reserve account for a financial institution shall
18 consist of moneys paid as fees by borrowers and the financial
19 institution, moneys transferred to the account from a small business
20 assistance fund, any matching federal moneys, and any other
21 moneys provided by the authority or other source.

22 (c) Notwithstanding any other ~~provision of~~ law, the authority
23 may establish and maintain loss reserve accounts with any financial
24 institution under ~~such any policies as~~ the authority may adopt.

25 (d) All moneys in a loss reserve account established pursuant
26 to this article are the exclusive property of, and solely controlled
27 by, the authority. Interest or income earned on moneys credited to
28 the loss reserve account shall be deemed to be part of the loss
29 reserve account. The authority may withdraw from the loss reserve
30 account all, *or a portion of, the* interest or other income that has
31 been credited to the loss reserve account. Any withdrawal made
32 pursuant to this subdivision may be made prior to paying any claim
33 and shall be used for the sole purpose of offsetting costs associated
34 with carrying out the program, including administrative costs and
35 loss reserve account contributions.

36 (e) The combined amount to be deposited by the participating
37 financial institution into any individual loss reserve account over
38 a three-year period, in connection with any single borrower or any
39 group of borrowers among which a common enterprise exists, shall
40 be not more than one hundred thousand dollars (\$100,000).

SEC. 3. Section 44559.4 of the Health and Safety Code is amended to read:

44559.4. (a) If a financial institution that is participating in the Capital Access Loan Program established pursuant to this article decides to enroll a qualified loan under the program in order to obtain the protection against loss provided by its loss reserve account, it shall notify the authority in writing on a form prescribed by the authority, within 10 days after the date on which the loan is made, of all of the following:

- (1) The disbursement of the loan.
- (2) The dollar amount of the loan enrolled.
- (3) The interest rate applicable to, and the term of, the loan.
- (4) The amount of the agreed upon premium.

(b) The financial institution may make a qualified loan to be enrolled under the program to an individual, or to a partnership or trust wholly owned or controlled by an individual, for the purpose of financing property that will be leased to a qualified business that is wholly owned by that individual. In that case, the property shall be treated as meeting the requirements of paragraph (1) of subdivision (g) of Section 44559.1.

(c) When making a qualified loan that will be enrolled under the program, the participating financial institution shall require the qualified business to which the loan is made to pay a fee of not less than 2 percent of the principal amount of the loan, but not more than $3\frac{1}{2}$ percent of the principal amount. The financial institution shall also pay a fee in an amount equal to the fee paid by the borrower. The financial institution shall deliver the fees collected under this subdivision to the authority for deposit in the loss reserve account for the institution. The financial institution may recover from the borrower the cost of its payments to the loss reserve account through the financing of the loan, upon the agreement of the financial institution and the borrower. The financial institution may cover the cost of borrower payments to the loan loss reserve account.

(d) When depositing fees collected under subdivision (c) to the credit of the loss reserve account for a participating financial institution, the authority shall do the following:

- (1) If no matching funds are available under a federal capital access program or other source, the authority shall transfer to the loss reserve account an amount that is not less than the amount of

1 the fees paid by the participating financial institution. However,
2 if the qualified business is located within a severely affected
3 community, the authority shall transfer to the loss reserve account
4 an amount ~~equal to~~ *not less than* 150 percent of the amount of the
5 fees paid by the participating financial institution.

6 (2) If matching funds are available under a federal capital access
7 program or other source, the authority shall transfer, on an
8 immediate or deferred basis, to the loss reserve account the amount
9 required by that federal program or other source. However, the
10 total amount deposited into the loss reserve account shall not be
11 less than the amount which would have been deposited in the
12 absence of matching funds.